

# LORD DAY & LORD, BARRETT SMITH

25 BROADWAY

NEW YORK, N.Y. 10004

TELEPHONE: (212) 344-8480

TELECOPIER: (212) 747-0031, 1677

TELEX: 62599 (WUI)

ROBERT F. AMBROSE  
MICHAEL F. ARMSTRONG  
ANDREW N. BAER  
HENRY DEFOREST BALDWIN  
EUGENE F. BANNIGAN  
JOHN J. BARRETT  
JOHN F. BARRY, JR.  
BANKS BROWN  
F. SEDGWICK BROWNE  
WILLIAM P. CASELLA  
JOHN W. CASTLES 3D  
MICHAEL A. CHAPNICK  
WILLIAM C. CLARKE  
WARREN H. COLODNER  
MARTIN F. CONNIFF  
KEVIN R. CONZELMANN  
KEVIN J. CURLEY  
GORDON J. DAVIS  
CHARLES E. ENGROS, JR.  
HOWARD B. EPSTEIN  
MICHAEL O. FINKELSTEIN  
LAURIE E. FOSTER  
GENEVIEVE L. FRAMAN  
MAHLON M. FRANKHAUSER\*  
SAMUEL S. FRIEDMAN  
JOHN D. GORDAN, III  
SUSAN GOTTBETTER  
EMERY W. HARPER  
CHRISTOPHER HILBERT  
FRANKLIN G. HUNT  
PETER L. KEANE  
RORY KELLEHER

EUGENE R. LICKER\*  
JOHN J. LOFLIN  
JOSEPH F. McDONALD  
JACOB J. MILES  
STEPHEN L. MILLMAN  
CHARLES R. MILLS\*\*  
SANDRA J. MULLINGS  
JERRY E. MUNTZ  
MICHAEL J. MURPHY  
GERALD A. NOVACK  
ALFRED T. OGDEN II  
FREDERIC W. PARNON  
RICHARD S. PETRETTI  
PETER J. PETTIBONE\*  
WILLIAM O. PURCELL  
MARTIN F. RICHMAN  
JACK B. SALWEN  
EDMUND R. SCHROEDER\*  
CARL A. SCHWARTZ, JR.\*  
J. EDWARD SHILLING  
DAVID SIMON  
ARTHUR D. SPORN  
MARIO J. SUAREZ  
BRIAN D. SULLIVAN  
JOHN SULLIVAN  
MARK THOMAN  
JAMES D. TUSSING\*  
BRENDA R. VIEHE-NAESS\*  
CHARLES R. WALKER, III  
JOHN C. WHITEHEAD  
JOANNE W. YOUNG\*  
ELLEN R. ZIMMERMAN

HERBERT BROWNELL  
JACK P. JEFFRIES  
CARL F. ROGGE, JR.  
OREN ROOT  
V. HENRY ROTHSCHILD 2ND  
J. BOND SMITH, JR.  
JOHN K. WATSON, JR.

## COUNSEL

26 BROADWAY  
NEW YORK, N.Y. 10004  
TELEPHONE: (212) 422-8180  
TELECOPIER: (212) 269-2942  
(212) 809-0561  
TELEX: 66420 (WUI)

1201 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004  
TELEPHONE: (202) 393-5024  
TELECOPIER: (202) 639-8780  
(202) 737-0507  
TELEX: 6971705 (WUI)

1 FREDERICK'S PLACE  
LONDON EC2R 8AB  
TELEPHONE: (01) 726-4451  
TELECOPIER: (01) 726-6559  
TELEX: 291629 LORDAY G

MEMBERS OF THE N.Y. BAR  
\* ALSO MEMBER OF THE D.C. BAR  
\*\* MEMBER OF THE CAL., D.C. AND VA. BARS ONLY

January 24, 1989

## DOCUMENTS FOR RECORDATION

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Secretary McGee:

Enclosed please find one original and one copy, as certified by a notary, of the secondary document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code:

Assignment and Assumption Agreement, dated as of December 28, 1988 among AMERICAN HOME ASSURANCE COMPANY and COMMERCE & INDUSTRY INSURANCE COMPANY, each a New York corporation, 70 Pine Street, New York, New York (collectively the "Assignors") and IRVING LEASING CORPORATION, 1290 Avenue of the Americas, New York, New York a New York corporation (the "Assignee") (the "Assignment").

The Assignment is a secondary document which is connected with a primary document, the Conditional Sales Agreement dated as of July 1, 1981, between MARINE INDUSTRIE LIMITEE (the "Vendor") and EXCHANGE NATIONAL BANK OF CHICAGO (the "Vendee"), as amended by the Amendment Agreement dated as of February 1, 1982, among the Assignors, CANADIAN

NATIONAL RAILWAY COMPANY, the Vendor, the Vendee, LA SALLE NATIONAL BANK, BANKERS LIFE INSURANCE COMPANY OF NEBRASKA, THE FRANKLIN LIFE INSURANCE COMPANY, HOME BENEFICIAL LIFE INSURANCE COMPANY and MORGAN GUARANTY TRUST COMPANY OF NEW YORK, and recorded under Recordation No. 13234.

We request that this assignment be cross-indexed.

A description of the equipment covered by the Assignment follows:

296 One-Hundred Ton Rotary Gondola Cars on lease to Canadian National Railway Company ("CN") with Road Numbers CN 199600 through CN 199895, inclusive, and 112 One-Hundred Ton Steel Covered Hopper Cars also on lease to CN with Road Numbers as follows:

CN 382169	CN 382400	CN 382431	CN 382535
CN 382362	CN 382401	CN 382432	CN 382536
CN 382364	CN 382402	CN 382433	CN 382537
CN 382365	CN 382403	CN 382434	CN 382539
CN 382366	CN 382404	CN 382437	CN 382540
CN 382367	CN 382405	CN 382438	CN 382546
CN 382368	CN 382406	CN 382439	CN 382549
CN 382373	CN 382407	CN 382440	CN 382550
CN 382374	CN 382408	CN 382441	CN 382551
CN 382375	CN 382409	CN 382444	CN 382552
CN 382376	CN 382410	CN 382445	CN 382553
CN 382379	CN 382411	CN 382446	CN 382556
CN 382380	CN 382412	CN 382447	CN 382558
CN 382381	CN 382413	CN 382448	CN 382559
CN 382382	CN 382414	CN 382453	CN 382560
CN 382383	CN 382415	CN 382469	CN 382563
CN 382384	CN 382416	CN 382494	CN 382564
CN 382386	CN 382417	CN 382495	CN 382565
CN 382387	CN 382418	CN 382496	CN 382566
CN 382389	CN 382419	CN 382501	CN 382581
CN 382390	CN 382420	CN 382502	CN 382582
CN 382391	CN 382421	CN 382504	CN 382585
CN 382392	CN 382422	CN 382505	CN 382586
CN 382394	CN 382423	CN 382515	CN 382612
CN 382395	CN 382424	CN 382516	CN 382618
CN 382399	CN 382427	CN 382520	CN 382622
	CN 382429	CN 382526	CN 382623
	CN 382430	CN 382531	CN 382625
		CN 382532	CN 382626

Each car described above also bears a marker with the inscription "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION. OWNED BY LA SALLE NATIONAL BANK AS AGENT OR ITS SUCCESSORS OR ASSIGNS."

Enclosed is fee of \$13.00 for the filing of the Assignment. Please return a stamped and recorded copy to my attention at the above address.

The Assignment is being entered into so that the Assignors may transfer their beneficial interest in and to the equipment described above to the Assignee.

A short summary of the document to appear in the index follows: Assignment and Assumption Agreement, dated as of December 28, 1988 among AMERICAN HOME ASSURANCE COMPANY and COMMERCE & INDUSTRY INSURANCE COMPANY, each a New York corporation, 70 Pine Street, New York, New York (collectively the "Assignors") and IRVING LEASING CORPORATION, a New York corporation, 1290 Avenue of the Americas, New York, New York (the "Assignee") (the "Assignment").

The Assignment is a secondary document which is connected with a primary document, the Conditional Sales Agreement dated as of July 1, 1981, between MARINE INDUSTRIE LIMITEE (the "Vendor") and EXCHANGE NATIONAL BANK OF CHICAGO (the "Vendee"), as amended by the Amendment Agreement dated as of February 1, 1982, among the Assignors, CANADIAN NATIONAL RAILWAY COMPANY, the Vendor, the Vendee, LA SALLE NATIONAL BANK, BANKERS LIFE INSURANCE COMPANY OF NEBRASKA, THE FRANKLIN LIFE INSURANCE COMPANY, HOME BENEFICIAL LIFE INSURANCE COMPANY and MORGAN GUARANTY TRUST COMPANY OF NEW YORK, and recorded under Recordation No. 13234.

The equipment covered by the Assignment are 296 One-Hundred Ton Rotary Gondola Cars on lease to Canadian National Railway Company ("CN") with Road Numbers CN 199600 through CN 199895, inclusive, and 112 One-Hundred Ton Steel Covered Hopper Cars also on lease to CN with Road Numbers as follows:

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CN 382368	CN 382406	CN 382439	CN 382549
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CN 382380	CN 382412	CN 382447	CN 382558
CN 382381	CN 382413	CN 382448	CN 382559
CN 382382	CN 382414	CN 382453	CN 382560

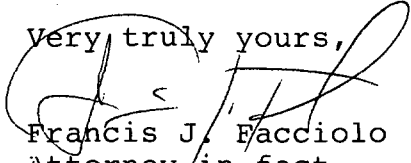
Ms. Noreta R. McGee  
Page 4

CN 382383	CN 382415	CN 382469	CN 382563
CN 382384	CN 382416	CN 382494	CN 382564
CN 382386	CN 382417	CN 382495	CN 382565
CN 382387	CN 382418	CN 382496	CN 382566
CN 382389	CN 382419	CN 382501	CN 382581
CN 382390	CN 382420	CN 382502	CN 382582
CN 382391	CN 382421	CN 382504	CN 382585
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CN 382395	CN 382424	CN 382516	CN 382618
CN 382399	CN 382427	CN 382520	CN 382622
	CN 382429	CN 382526	CN 382623
	CN 382430	CN 382531	CN 382625
		CN 382532	CN 382626

Each car described above also bears a marker with the inscription "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION. OWNED BY LA SALLE NATIONAL BANK AS AGENT OR ITS SUCCESSORS OR ASSIGNS."

Enclosures

Very truly yours,

  
Francis J. Facciolo  
Attorney-in-fact  
for Irving Leasing Corporation

**Interstate Commerce Commission**  
Washington, D.C. 20423

1/26/89

OFFICE OF THE SECRETARY

Francis J. Facciolo  
Lord Day & Lord, Barrett Smith  
25 Broadway  
New York, N.Y. 10004

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/26/89 at 11:05am, and assigned re-cordation number(s). 13224-A & 13659-D

Sincerely yours,

*Narta L. McGee*  
Secretary

Enclosure(s)

11

AFFIDAVIT

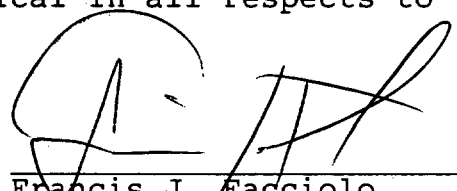
13224-A  
REGISTRATION NO. 13224-A

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INTERSTATE COMMERCE COMMISSION

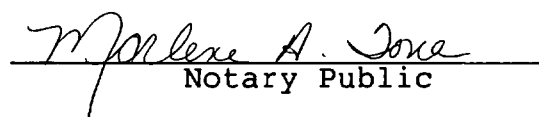
STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss:

The undersigned, Francis J. Facciolo, having been first duly sworn, deposes and says that he has compared the copy of the Assignment and Assumption Agreement, dated as of December 28, 1988, between American Home Assurance Company and Commerce & Industry Insurance Company and Irving Leasing Corporation, enclosed with this Affidavit and has found the copy to be complete and identical in all respects to the original document.



Francis J. Facciolo  
Attorney-In-Fact for  
Irving Leasing Corporation

SUBSCRIBED AND SWORN to before me this 24<sup>th</sup> day of January, 1989.

  
Notary Public

My Commission Expires:

MARLENE A. TONA  
Notary Public, State of New York  
No. 01TO4734646  
Qualified in Kings County

Certificate filed in New York County  
Commission Expires March 30, 1989

(SEAL)

13254-E  
JAN 28 1989 11 05 AM  
INTERSTATE COMMERCE COMMISSION

## ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT dated December 28, 1988 between AMERICAN HOME ASSURANCE COMPANY and COMMERCE & INDUSTRY INSURANCE COMPANY, each a New York corporation (each individually an "Assignor" and collectively hereinafter the "Assignors"), and IRVING LEASING CORPORATION, a New York corporation (the "Assignee").

### W I T N E S S E T H

WHEREAS, each of the Assignors is a grantor and beneficiary of the trust (the "Trust") established pursuant to a trust agreement (the "Trust Agreement") identified in Schedule 1 hereto and pursuant to the Trust Agreement holds a beneficial interest in the property, rights and interests owned or held by the Trust, including, without limitation, certain transportation equipment (the "Equipment") identified in said Schedule 1 and rights and benefits under the Participation Agreement, Lease and other agreements entered into by the trustee of the Trust in connection with the lease transactions (the "Lease Transactions") identified in the Schedule 1 (all such property, rights and interests of the Trust being hereinafter called the "Trust Estate"); and

WHEREAS, in connection with the Trust, Equipment and Lease Transaction identified to it in Schedule 1 hereto each of the Assignors holds certain rights and benefits not constituting part of the Trust Estate, pursuant to agreements to which each of the Assignors is a party or is named as a third party beneficiary, as an owner participant or otherwise, including, without limitation, agreements providing for indemnification of each Assignor with respect to taxes and other costs, liabilities and claims, agreements providing for the Assignor to be insured under certain policies of insurance and agreements providing for apportionment of tax benefits and residual values with other beneficial owners of Equipment (all such rights and benefits, together with any other rights or property of each of the

Assignors relating to the Trust, the Equipment or the Lease Transactions and not constituting part of the Trust Estate, being hereinafter called "Ancillary Rights"); and

WHEREAS, each of the Assignors wishes to sell and assign to the Assignee and the Assignee wishes to buy and assume all right, title and interest of the Assignors in and to the Trust Agreement, the Trust Estate, the Equipment, the Lease Transactions and Ancillary Rights (all hereinafter called the "Assets"); and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto do hereby agree as follows (capitalized terms used herein without definition having the meaning ascribed to them in the Participation Agreement referred to in Schedule 1 hereto)

1. Assignment. Each of the Assignors has sold, assigned, conveyed, transferred and set over, and does hereby sell, assign, convey, transfer and set over, unto the Assignee as of the date hereof all of its present and future right, title and interest in, under and with respect to the Assets and any proceeds therefrom, together with all other documents and instruments evidencing any of such right, title and interest.

2. Assumption. The Assignee hereby agrees for the benefit of the parties to Trust Agreement, the Participation Agreement and the Indemnity Agreement (the "Assigned Agreements") to be deemed a party to and be bound by the terms of the Assigned Agreements and hereby assumes all of the duties and obligations of the Assignors under the Assigned Agreements arising from and after the date hereof. Nothing herein shall be construed to make the Assignee liable for any other duties or obligations of the Assignors or to have any liability to holders of the CSA Indebtedness for any amounts payable in connection therewith.

3. Continuing Liability. Each of the Assignors hereby confirms for the benefit of the Assignee and the parties to the Assigned Agreements that it shall not be released from any of its obligations or liabilities arising or accruing under the Assigned Agreements prior to the Closing Date. The Assignors hereby confirm for the benefit of the parties to the Assigned Agreements that until consents to the assignment and assumption contemplated by



Sections 1 and 2 hereof shall have been obtained from the Trustee and the Agent (on behalf of the Investors) each Assignor, shall remain secondarily liable for the obligations of the Assignee under the Assigned Agreements.

4. Governing Law. This Assignment shall be governed by and construed in accordance with the law of the State of New York.

5. Counterparts. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be signed by both parties so long as each party shall sign at least one counterpart.

IN WITNESS WHEREOF, the parties hereto, through their respective officers thereunto duly authorized, have duly executed this Assignment as of the day and year first above written.

AMERICAN HOME ASSURANCE COMPANY,  
ASSIGNOR

By R. E. Sherry  
Title: ASST TREASURER

COMMERCE & INDUSTRY INSURANCE  
COMPANY,  
ASSIGNOR

By R. E. Sherry  
Title: ASST TREASURER  
IRVING LEASING CORPORATION,  
ASSIGNEE

By R. E. Sherry  
Title: VICE PRESIDENT

STATE OF NEW YORK, )  
 ) ss.:  
COUNTY OF NEW YORK)

On this 28th day of December, 1988, before me personally appeared Robert E. Sherby to me personally known, who being by me duly sworn, says that he is the Assistant Treasurer of Commerce & Industry Insurance Company, that said instrument was signed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Rita Rappouli  
Notary Public

[ seal ]

My Commission Expires:

RITA RAPPOSELLI  
Notary Public, State of New York  
No. 31-4701503  
Qualified in New York County  
Commission Expires 11/30, 1989

STATE OF NEW YORK, )

) SS.:

COUNTY OF NEW YORK)

On this 28th day of December, 1988, before me personally appeared Robert E. Sherby to me personally known, who being by me duly sworn, says that he is the Assistant Treasurer of American Home Assurance Company, that said instrument was signed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Rita Rapposell  
Notary Public

[seal]

My Commission Expires:

RITA RAPPOSELLI  
Notary Public, State of New York  
No. 31-4701503  
Qualified in New York County  
Commission Expires 11/30, 1989

STATE OF NEW YORK, )  
 ) ss.:  
COUNTY OF NEW YORK)

On this 28th day of December, 1988, before me personally appeared Peter Rudzitis to me personally known, who being by me duly sworn, says that he is the Assistant Vice President of Irving Leasing Corporation, that said instrument was signed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

[seal]

My Commission Expires:

RITA RAPPOSELLI  
Notary Public, State of New York  
No. 31-4701503  
Qualified in New York County  
Commission Expires: 12/30, 1989

Schedule I  
AA-CR

Trust: Trust established pursuant to Trust Agreement dated as of July 1, 1981, among American Home Assurance Company and Commerce & Industry Insurance Company, as Owners and Exchange National Bank of Chicago, as Owner Trustee.

Sellers: American Home Assurance Company (90% ownership); Commerce & Industry Insurance Company (10% ownership)

Equipment: 296 One-Hundred Ton Rotary Gondola Cars and 112 Steel Covered Hopper Cars, all as more fully described in Annex A hereto.

Lease Transaction: Transactions entered into pursuant to or in connection with the Participation Agreement dated as of July 1, 1981, as amended, among Canadian National Railway Company, Lessee; the parties named in Schedule A thereto, Investors, La Salle National Bank, Agent; American Home Assurance Company and Commerce & Industry Insurance Company, Owners and Exchange National Bank of Chicago as Owner Trustee, including, without limitation (i) the Conditional Sale Agreement dated as of July 1, 1981, filed with the Interstate Commerce Commission (the "ICC") pursuant to 49 U.S.C. §11303 on September 14, 1981 and assigned recordation number 13234, (ii) the Agreement and Assignment dated as of July 1, 1981, filed with the ICC pursuant to 49 U.S.C. §11303 on September 14, 1981 and assigned recordation number 13234-A, (iii) the Lease of Railroad Equipment dated as of July 1, 1981 filed with the ICC pursuant to 49 U.S.C. Section 11303 on September 14, 1981 and assigned recordation number 13234-B, (iv) the Assignment of Lease and Agreement dated as of July 1, 1981 which was filed with the ICC pursuant to 49 U.S.C. §11303 on September 14, 1981 and assigned recordation number 13234-C and (v) Amendment Agreement dated as of February 1, 1982 filed with the ICC pursuant to 49 U.S.C. §11303 on March 17, 1982 and assigned recordation number 13234-D.

# Annex A

## Lease of Railroad Equipment

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers</u>
Marine Industrie--	296	
One-hundred	<del>300</del>	CN 199600
Ton Rotary		through
Gondola		CN 199898
Cars		inclusive
Marine Industrie--	112	
One-hundred	<del>130</del>	CN 382169
Ton Steel		CN 382362
Covered		<del>CN 382363</del>
Hopper Cars		CN 382364
		CN 382365
		CN 382366
		CN 382367
		CN 382368
		CN 382373
		CN 382374
		CN 382375
		CN 382376
		<del>CN 382377</del>
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		CN 382423
		CN 382424
		CN 382427
		CN 382429
		CN 382430

# Annex A

Type

Quantity

Lessee's  
Road Numbers

CN 382431	<del>CN 382534</del>
CN 382432	CN 382535
CN 382433	CN 382536
CN 382434	CN 382537
<del>CN 382435</del>	<del>CN 382538</del>
CN 382437	CN 382539
CN 382438	CN 382540
CN 382439	<del>CN 382541</del>
CN 382440	<del>CN 382542</del>
CN 382441	<del>CN 382543</del>
CN 382444	CN 382546
CN 382445	<del>CN 382547</del>
CN 382446	<del>CN 382548</del>
CN 382447	CN 382549
CN 382448	CN 382550
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CN 382469	CN 382552
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CN 382520	<del>CN 382511</del>
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CN 382526	CN 382622
CN 382531	CN 382623
CN 382532	CN 382625
<del>CN 382533</del>	CN 382626